

In the Indiana Supreme Court

CAUSE NUMBER: 94S00-0901-MS-4

ORDER AMENDING INDIANA RULES OF TRIAL PROCEDURE

Under the authority vested in this Court to provide by rule for the procedure employed in all courts of this state and this Court's inherent authority to supervise the administration of all courts of this state, Indiana Rule of Trial Procedure 60.5 is amended to read as follows (deletions shown by ~~striking~~ and new text shown by underlining):

INDIANA RULES OF TRIAL PROCEDURE

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Rule 60.5. Mandate of funds

(A) Scope of mandate. Courts shall limit their requests for funds to those which are reasonably necessary for the operation of the court or court-related functions. Mandate will not lie for extravagant, arbitrary or unwarranted expenditures nor for personal expenditures (e.g., personal telephone bills, bar association memberships, disciplinary fees). Prior to issuing the order, the court shall meet with the mandated party to demonstrate the need for said funds. At any time in the process, the dispute may be submitted to mediation by agreement of the parties or by order of the Supreme Court or the special judge.

(B) Procedure. Whenever a court, except the Supreme Court or the Court of Appeals, desires to order either a municipality, a political subdivision of the state, or an officer of either to appropriate or to pay unappropriated funds for the operation of the court or court-related functions, such court shall issue and cause to be served upon such municipality, political subdivision or officer an order to show cause why such appropriation or payment should not be made. Such order to show cause shall be captioned "Order for Mandate of Funds". The matter shall be set for trial on the merits of such order to show cause unless the legislative body, the chief executive officer or the affected officer files a waiver in writing of such a trial and agrees to make such appropriation or payment. The trial shall be without a jury, before a special judge of the court that made the order. There shall be no change of venue from the county or from the special judge appointed by the Supreme Court. The court

shall promptly notify the Supreme Court of the entry of such order to show cause and the Supreme Court shall then appoint ~~a judge or attorney to act as special judge~~ an attorney who is not a current or former regular judge and who does not reside nor regularly practice law in the county issuing the Order of Mandate of Funds or in any county contiguous thereto. The special judge shall not reside in the county in which the petition is to be tried nor in a county bordering on such county. If the appointed judge fails to qualify within seven [7] days after he has received notice of his appointment, the Supreme Court shall follow the same procedure until an appointed judge does properly qualify. Unless expressly waived by the respondent in writing within thirty (30) days after the entering of the trial judge's decree, a decree or order mandating the payment of funds for the operation of the court or court-related functions shall be automatically reviewed by the Supreme Court. Promptly on expiration of such thirty (30) day period, the trial judge shall certify such decree together with either a stipulation of facts or an electronic transcription of the evidence to the Supreme Court. No motion to correct error nor notice of appeal shall be filed. No mandate order for appropriation or payment of funds made by any court other than the Supreme Court or Court of Appeals shall direct that attorney fees be paid at a rate greater than the reasonable and customary hourly rate for an attorney in the county. No mandate order shall be effective unless it is entered after trial as herein provided and until the order has been reviewed by the Supreme Court or such review is expressly waived as herein provided.

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These amendments shall take effect immediately.

The Clerk of this Court is directed to forward a copy of this Order to the clerk of each circuit court in the state of Indiana; Attorney General of Indiana; Legislative Services Agency and its Office of Code Revision; Administrator, Indiana Supreme Court; Administrator, Indiana Court of Appeals; Administrator, Indiana Tax Court; Public Defender of Indiana; Prosecuting Attorney's Council; Indiana Supreme Court Disciplinary Commission; Indiana Supreme Court Commission for Continuing Legal Education; Indiana Board of Law Examiners; Indiana Judicial Center; Division of State Court Administration; Indiana Judges and Lawyers Assistance Program; Lindsey Borschel, Web Coordinator for the Division of Supreme Court Administration; Hon. Thomas J. Felts, President, Indiana Judges Association; David Bottorff, Executive Director, Association of Indiana Counties;

Senator Richard Bray, Chairman of the Indiana Senate Judiciary Committee; the libraries of all law schools in this state; the Michie Company; and Thomson/West.

Thomson/West is directed to publish this Order in the advance sheets of this Court.

The Clerks of the Circuit Courts are directed to bring this Order to the attention of all judges within their respective counties and to post this Order for examination by the Bar and general public.

DONE at Indianapolis, Indiana, this _____ day of _____, 2009.

Randall T. Shepard
Chief Justice of Indiana

All Justices concur.